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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,060	11/14/2003	David G. Frank	9351-217	9055
1059	7590	10/11/2006		
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			EXAMINER MARTIN, ANGELA J	
			ART UNIT 1745	PAPER NUMBER

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/712,060	Applicant(s) FRANK ET AL.	
	Examiner Angela J. Martin	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/05;6/05;3/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. This application discloses and claims only subject matter disclosed in prior Application No. 09/854,362, filed 5/15/2001, and names an inventor or inventors named in the prior application. Accordingly, this application may constitute a continuation or division. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Applicant is advised that should claim 28 be found allowable, claim 55 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

4. Claims 28-42, 44-50, and 55 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-22 of prior U.S. Patent No. 6,852,439 B2. This is a double patenting rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 28-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmid et al., U.S. Pat. No. 6,080,503.

Rejection of claims 28-54 drawn to an electrochemical cell assembly; claim 55 drawn to a fuel cell assembly.

Schmid et al., teach an electrochemical/fuel cell assembly comprising a plurality of separate elements (abstract), at least one groove network element extending through the fuel cell assembly (col. 8, lines 21-32), wherein the seal provides a barrier between at least two of the elements to define a chamber for a fluid for operation of the fuel cell (col. 5, lines 1-6). The disclosure of "dispensing...and injection molding" of the sealant (col. 5, lines 47-50) is considered to encompass "including at least one filling port for the groove network" and "a seal within each groove network that has been formed in place after assembly of the separate elements" since injection molding would require a filling port to inject the sealant into the structure and injection molding of the sealant would fill in the grooves after assembly of the elements. Additionally, Schmid et al., teach the

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groove network comprises a plurality of closed groove segments, each of which comprises at least a groove segment in one of the separate elements that faces and is closed by another of the separate elements, to form the closed groove segments (Fig. 4b); and it teaches the fuel cell assembly comprises a plurality of individual fuel cells (stack) (abstract). It also teaches at least some of the closed groove segments each comprise a first groove segment in one of the separate elements facing a second groove segment in another of the separate elements (Fig. 3c). In addition, it teaches a fuel cell assembly including an at least one fuel cell and, on one side, a seal molded in place to abut the other side of another, similar assembly to form a chamber for coolant, whereby a plurality of assemblies can be assembled to form a large fuel cell unit assembly with coolant chambers formed between adjacent fuel cell assemblies (col. 4, lines 59-67 and col. 5, lines 1-12). Schmid et al., teach an electrochemical cell assembly comprising a plurality of separate elements (abstract), at least one groove network extending through the assembly (col. 8, lines 21-32), and a seal within each groove network, wherein the seal defines a barrier between at least two elements to define a chamber for a fluid for operation of the assembly (col. 5, lines 1-6). The disclosure of "dispensing...and injection molding" of the sealant (col. 5, lines 47-50) is considered to encompass "including at least one filling port for the groove network" and "a seal within each groove network that has been formed in place after assembly of the separate elements" since injection molding would require a filling port to inject the sealant into the structure and injection molding of the sealant would fill in the grooves after assembly of the elements.

Thus, the claims are anticipated.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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